

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW PERRONG INDIVIDUALLY	:	
AND ON BEHALF OF ALL OTHERS	:	CIVIL ACTION
SIMILARLY SITUATED,	:	
	:	No. 22-4654
Plaintiff,	:	
	:	
v.	:	
	:	
CHIMA, L.L.C.,	:	
	:	
Defendant.	:	

**DEFENDANT CHIMA, L.L.C.’S RESPONSE TO
PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff’s Notice of Supplemental Authority cites *Smith v. Vision Solar LLC* for the proposition that “whether equipment qualifies as an ATDS is a mixed question of fact and law.” Doc. 21 (quoting *Smith v. Vision Solar LLC*, 2023 WL 2539017 at *2 (E.D. Pa. Mar. 16, 2023)). This quotation is inapt, however, because Chima’s motion to dismiss (Doc. 14) accepts the well-pleaded factual allegations of the complaint as true (for purposes of the motion only) as required by the well-established legal standard for motions under Rule 12(b)(6). Chima’s motion to dismiss argues that, under the law, the facts alleged in the complaint do not plausibly imply a right to recovery under the TCPA because the facts alleged do not permit the inference that Chima used an ATDS to contact plaintiff. For these reasons, Chima respectfully requests that its motion to dismiss be granted.

Respectfully submitted,

Dated: April 5, 2023

By: /s/ Andrew K. Garden

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's electronic filing system on April 5, 2023, which will automatically serve all counsel of record.

/s/ Andrew K. Garden

Andrew K. Garden
CLARK HILL PLC